

**REMARKS**

An excess claim fee payment letter is submitted herewith for one (1) additional independent claim.

Claims 1-20 are all the claims presently pending in the application. Claims 5, 9, and 11 are amended to further clarify the present invention and claims 13-20 are added. Claims 1-2, 5-6, and 9-13 are independent.

These amendments are made only to more particularly point out the invention for the Examiner and not for narrowing the scope of the claims or for any reason related to a statutory requirement for patentability.

Applicant also notes that, notwithstanding any claim amendments herein or later during prosecution, Applicant's intent is to encompass equivalents of all claim elements.

Claims 1- 12 stand rejected under 35 U.S.C. § 102(b) as being anticipated by the Kleijne et al. reference (U.S. Patent No. 4,691,350).

This rejection is respectfully traversed in the following discussion.

**I. THE INFORMATION DISCLOSURE STATEMENT**

The Examiner failed to indicate consideration of the foreign language references which were submitted in Information Disclosure Statements that were filed on March 13, 2002 and July 16, 2002.

The Examiner also failed to indicate why the Examiner refuses to consider these references.

In the absence of the Examiner's explanation for these actions, Applicant assumes that the Examiner is under the mistaken understanding that the Examiner does not have to indicate

consideration of foreign language references.

Applicant respectfully directs the Examiner's attention to 37 C.F.R. § 1.98(3) which merely requires a concise explanation of the relevance of each publication that is not in the English language. M.P.E.P. § 609A(3) states:

“Where the information listed is not in the English language, but was cited in a search report or other action by a foreign patent office in a counterpart foreign application, the requirement for a concise explanation of relevancy can be satisfied by submitting an English-language version of the search report or action which indicates the degree of relevance found by the foreign office.” (Emphasis Applicant's)

The Information Disclosure Statements that were filed on March 13, 2002 and July 16, 2002 clearly pointed out that the information listed was cited in actions by a foreign patent office in a counterpart foreign application and included an English-language versions of the Actions which indicates the degree of relevance found by the foreign office.

Therefore, Applicant respectfully requests that the Examiner indicate consideration of all references that were submitted in the Information Disclosure Statements that were filed on March 13, 2002 and July 16, 2002. Attached hereto are copies of the PTO-1449 Forms for the Examiner's convenience.

## **II. THE CLAIMED INVENTION**

A first exemplary embodiment of the claimed invention, as defined by independent claim 1, is directed to a data storage device that includes storage means, installed in a housing, for storing predetermined confidential data, data generation means for generating

data representing deflection of the housing in which the storage means is installed, and detection means for detecting physical impact applied to the housing in accordance with the data generated by the data generation means.

A second exemplary embodiment of the claimed invention, as defined by independent claim 9, is directed to a detection method includes generating data representing deflection of a housing in which a storage device for storing predetermined confidential data is installed, and detecting a deflection of the housing in accordance with the data generated by the generating data.

A third exemplary embodiment of the claimed invention, as defined by independent claim 1, is directed to a data storage device that includes a data storage in a housing, a plurality of electrodes arranged in the housing, and a processor that determines a deflection of the housing based upon a capacitance between the plurality of electrodes.

Conventional secure data storage devices have relied upon a key cryptography system for encoding confidential data. These devices have stored the keys within a storage that includes micro-switches within its housing. However, these micro-switches are not capable of reliably detecting a dismantling of the housing if the micro-switches are avoided.

In stark contrast, the present invention provides a data storage device that generates data that represents a deflection of the housing. For example, one exemplary embodiment of the present invention detects the capacitance between a plurality of electrodes within the housing of the data storage device and determines whether the housing is deflected based upon a change of capacitance between the plurality of electrodes. In this manner, the present invention is capable of reliably detecting any deflection of the housing as might occur when one attempts to dismantle or otherwise gain access to the inside of the housing.

### III. THE PRIOR ART REJECTION

The Examiner alleges that the Kleijne et al. reference teaches the claimed invention. Applicant submits, however, that there are elements of the claimed invention which are neither taught nor suggested by the Kleijne et al. reference.

The Kleijne et al. reference discloses a data storage device that incorporates ceramic plates that each have a pair of serially connective conductive path segments that are provided on separate, superimposed layers (Abstract; and col. 2, lines 12-34). The Kleijne et al. reference further includes an electronic circuit 84 (Fig. 14) that includes tamper detection circuitry 102 (Fig. 15). The tamper detection circuitry 102 includes sense circuits 124 and 126. The sense circuit 124 determines whether the voltage plane has shorted to the wire mesh (col. 11, lines 22-25). Similarly, the sense circuit 126 determines whether the wire mesh has been broken or shorted (col. 11, lines 41-44).

In summary, the Kleijne et al. reference discloses providing a conductive path that windingly and comprehensively covers a substantial portion of the inside of the housing of the data storage device and is capable of determining if the conductive path has been broken or shorted as a result of an attempt to penetrate or dismantle the housing.

The Kleijne et al. reference does not teach or suggest the features of the present invention including a data storage device that generates data that represents a deflection of the housing. Indeed, as long as the conductive path of the system disclosed by the Kleijne et al. reference is not shorted or broken, the system disclosed by the Kleijne et al. reference is not capable of generating data that represents a deflection of the housing.

The Examiner cites col. 9, lines 8-45 of the Kleijne et al. reference in an attempt to support the Examiner's allegation that the Kleijne et al. reference discloses a data generation

means for generating data representing deflection of the housing in which the storage means is installed. However, the Examiner's citation of Kleijne et al. reference has absolutely nothing to do with the detection of anything, let alone the generation of data that represents the deflection of a housing.

Rather, the portion of the Kleijne et al. reference which the Examiner cites is only relevant to the data processing circuitry 100 within the electronic circuit 84. The Kleijne et al. reference explains that "the data processing circuitry 100 can be utilized to perform any desired data operation in such applications as, for example, electronic payment systems, electronic fund transfers, data encryption/decryption, PIN (personal identification number) verification, data transmission/reception, access control and home banking."

Clearly, the Examiner is mistaken in the allegation that any portion of the Kleijne et al. reference, let alone the Examiner's citation of col. 9, lines 8-45 teaches or suggests generating data that represents a deflection of a housing.

Further, the Examiner alleges that the Kleijne et al. reference discloses detecting a

#### **IV. FORMAL MATTERS AND CONCLUSION**

The Office Action objects to the drawings. This Amendment encloses a replacement drawing sheet which corrects Figures 1-4 in accordance with the Notice of Draftperson's Patent Drawing Review. Applicant respectfully requests withdrawal of this objection.

In view of the foregoing amendments and remarks, Applicant respectfully submits that claims 1-20, all the claims presently pending in the Application, are patentably distinct over the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

09/466,925

14

DOCKET NO. 99N034-US

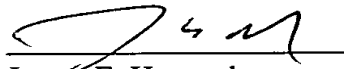
Should the Examiner find the Application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Attorney's Deposit Account No. 50-0481.

Respectfully Submitted,

Date: \_\_\_\_\_

2/4/04



James E. Howard

Registration No. 39,715

**McGinn & Gibb, PLLC**

8321 Old Courthouse Rd., Suite 200

Vienna, Virginia 22182

(703) 761-4100

**Customer No. 21254**